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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**

9 SHIRLEY MCCLOUD,

10 Plaintiff,

11 v.

12 DEPOSITORS INSURANCE COMPANY,

13 Defendant.
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Case No. C06-5140 JKA

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

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16 This matter comes before the Court on the Motion for Summary Judgment filed by Defendant
17 Depositors Insurance Company. The court has considered all materials submitted in support of and in response
18 to said motion, as well as the files and records herein. For the reasons that follow, the Court **GRANTS**
19 Defendant's Motion for Summary Judgment.

20 **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

21 Plaintiff brought this action to recover underinsured motorist compensation from Defendant. Plaintiff
22 was injured in a motor vehicle accident and filed suit in state district court against the other driver, Betty
23 Hatfield. Plaintiff tried her case to a jury and the jury's verdict far exceeded the \$50,000 jurisdictional limit
24 of the court. Defendant avers that the verdict was reduced to the jurisdictional limit and was then fully satisfied
25 by Ms. Hatfield's insurer. Plaintiff acknowledges the factual scenario set forth by defendant, except that she
26 states the \$289,500 verdict entered in the District Court was not reduced to \$50,000 as alleged by defendant.
27 The court finds this "disputed" issue to be a distinction without a difference, because there is no dispute that
28 the district court judgment was satisfied, and that the court's jurisdictional limit was \$50,000. Plaintiff now
claims that Defendant breached its contract of insurance when Defendant refused to pay her compensation

1 based on the jury's verdict. Plaintiff also claims that Defendant breached its duty of good faith, breached its
2 fiduciary duties, and violated the Washington Consumer Protection Act.

3 Defendant seeks summary judgment on Plaintiff's claims on the grounds that Plaintiff is not "legally
4 entitled to recover" any further damages from the tortfeasor and that, therefore, the terms of the insurance
5 policy do not provide for an entitlement to compensation. Defendant has also raised alternative arguments that
6 Plaintiff should be estopped from making a claim in excess of \$50,000 and that, in any case, Defendant is not
7 bound by the jury's verdict.

8 Standards

9 A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and
10 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material
11 fact and that the moving party is entitled to a judgment as a matter of law." FRCP 56(c). The burden of
12 establishing there is no genuine issue of material fact lies with the moving party. See *Celotex Corp. v. Catrett*,
13 477 U.S. 317, 322-23, 91 L. Ed.2d 265, 106 S. Ct. 2548 (1986). If the non-moving party will bear the burden
14 of proof at trial, the moving party may meet its burden by pointing out the absence of evidence to support the
15 non-moving party's case. See *Id.* at 325. Once the moving party has met its burden, either by presenting
16 evidence which, if uncontradicted, would entitle it to a directed verdict at trial or by demonstrating the lack of
17 evidence for the non-moving party's case, FRCP 56(e) shifts to the non-moving party the burden of presenting
18 specific facts showing a genuine issue for trial. See *British Airways Board v. Boeing Company*, 585 F.2d 946,
19 950-52 (9th Cir. 1978).

20 A party opposing summary judgment may not rest upon the mere allegations or denials in his
21 pleadings. FRCP 56(e). Rather, responses, either by affidavit or as otherwise provided by the Rule, must set
22 forth specific facts showing that there is a genuine issue of fact. FRCP 56(e). With respect to the quantum
23 of proof required to avoid summary judgment, "[t]he mere existence of a scintilla of evidence in support of the
24 non-moving party's position is not sufficient." *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th
25 Cir. 1995). There must be enough of a showing that the jury could reasonably find for the non-moving party.
26 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 91 L. Ed.2d 202, 106 S. Ct. 2505 (1986).

27 The question to be resolved is whether reasonable minds could differ as to the import of the evidence.
28 *Eisenberg v. Insurance Company of North America*, 815 F.2d 1285, 1288 (9th Cir. 1987). If the evidence

1 submitted in opposition to summary judgment is merely colorable, or is not significantly probative, summary
2 judgment may be granted. *Id.* at 1288.

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4 A non-moving party is entitled to the benefit of reasonable inferences that may be drawn from the evidence;
5 however, speculation is not permissible. An “inference” is defined as “a process where the thinker passes from
6 one proposition to another that is connected with the former in some way.” *Poppell v. City of San Diego*, 149
7 F.3d 951, 954 (9th Cir. 1998). The passage from one proposition to another must be logically compelled and
8 “cannot be mere speculation, intuition, or guessing.” *Id.* Thus, the “laws of logic” draw the line “between a
9 reasonable inference that may permissibly be drawn by a jury from basic facts in evidence and an impermissible
10 speculation.” *Id.*

11 In this case, there are no material facts in dispute. Analysis of the insurance contract and effect of the
12 judgment in Plaintiff’s suit against the tortfeasor, Betty Hatfield, involve questions of law.

13 Facts

14 The following facts are undisputed:

15 On January 26, 2003, Plaintiff was involved in a two car motor vehicle accident and
16 sustained injuries as a result of that accident. On December 10, 2004, Plaintiff filed suit against the operator
17 of the other vehicle, Betty Hatfield. Suit was filed in Washington District Court for the County of Cowlitz.
18 Under Washington law, the jurisdictional limit of district court is \$50,000. RCW 3.66.020

19 In a letter dated August 19, 2005, Plaintiff’s counsel informed Defendant that a lawsuit had been filed
20 and that a jury trial was set for September 8, 2005. On September 1, 2005, an attorney representing Defendant
21 requested that Plaintiff’s counsel either agree to postpone the trial or agree that Defendant would not be bound
22 by the result. Plaintiff’s counsel did not respond to this request.

23 Plaintiff’s trial against Ms. Hatfield commenced on September 8, 2005 and the jury returned a verdict
24 on September 9, 2005. The amount of the jury verdict was \$289,824.00. Based on the jurisdictional limits of
25 the court, this amount was reduced to \$50,000. Including costs, judgment was entered for \$50,302.60. Ms.
26 Hatfield’s insurer paid this amount in full satisfaction of the judgment.

27 After trial, Plaintiff requested that Defendant pay her underinsured motorist compensation up to the
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1 limits of her policy. Plaintiff's insurance policy was issued by Defendant and included underinsured motorist
2 coverage up to a limit of \$100,000. The
3 policy provides that Defendant "will pay compensatory damages which an 'insured' is legally entitled to
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5 recover from the owner or operator of an 'underinsured motor vehicle.'" Under the policy, "underinsured
6 motor vehicle" is defined, *inter alia*, as a vehicle "[t]o which a liability bond or policy applies at the time of the
7 accident but the amount paid under that bond or policy to an 'insured' is not enough to pay the full amount the
8 'insured' is legally entitled to recover as damages.

9 Discussion

10 This case is governed by Washington law. In particular, interpretation of the language providing
11 underinsured motorist insurance involves both statutory and contractual analysis. *See Sayan v. United Services*
12 *Automobile Association*, 43 Wn. App. 148, 153, 716 P.2d 895, 898 (1986). RCW 48.22.030 provides that
13 automobile insurance policies must provide coverage for insured persons "who are legally entitled to recover
14 damages from owners or operators of underinsured motor vehicles." The policy issued by Defendant complied
15 with this requirement and mirrored the statutory language by providing coverage if an insured was "legally
16 entitled to recover" damages, but was unable to do so because of inadequate insurance carried by the
17 tortfeasor.

18 "Legally entitled to recover" means that there must be a legal right to collect money as damages from
19 the tortfeasor. For example, if a tortfeasor is immune from liability, an insured would not be legally entitled
20 to recover damages from such person and would, therefore, not be entitled to underinsured motorist
21 compensation from his insurer. *Sayan*, 43 Wn. App. at 156, 716 P.2d at 900. Thus, entitlement to
22 underinsured motorist compensation is directly linked to what an insured may legally recover from a tortfeasor.

23 In this case, Plaintiff obtained a judgment against Ms. Hatfield. The amount of that
24 judgment represented the maximum amount that Plaintiff was "legally entitled to recover" from Ms. Hatfield.
25 When satisfaction of this judgment was entered, under RCW 4.56.100, Plaintiff received all compensation she
26 was "legally entitled to receive." *See Reichl v. State Farm Mutual Automobile Insurance Co.*, 75 Wn App.
27 452, 880 P.2d 558 (1994). *Reichl* was a PIP reimbursement case in which a judgment was entered in the
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1 plaintiff's favor against a tortfeasor. The plaintiff's insurer then sought reimbursement of PIP payments it
2 made. Reimbursement was authorized because the plaintiff was fully compensated by the tortfeasor. The court
3 held that "[a]s a matter of law, [the plaintiff] was fully compensated when the judgment in that case was
4 satisfied." *Id.* at 456, 880 P.2d at 560.

5 Plaintiff has cited to *Mencel v. Farmers Insurance Co.*, 86 Wn. App. 480, 937 P.2d 627 (1997) to
6 support her claim; however, *Mencel* is distinguishable. In *Mencel*, a jury verdict was made in the amount of
7 \$804,450. Before judgment was entered, the plaintiff settled with the tortfeasor for \$725,000. The plaintiff
8 then made a claim against his insurer for underinsured motorist compensation. The insurer argued that the
9 plaintiff was not "legally entitled to recover" additional compensation from the tortfeasor and was not entitled
10 to underinsured motorist compensation. The court held that the settlement amount did not represent full
11 compensation because the plaintiff could have received a judgment up to the amount of the jury verdict.
12 Accordingly, the plaintiff was entitled to additional compensation from his insurer. The present case is
13 distinguishable because the jury verdict exceeded the jurisdictional limit of the court and the maximum amount
14 of a judgment was entered and satisfied. Additionally, unlike *Mencel*, Plaintiff did not settle for an amount
15 less than the potential judgment.

16 The Court, therefore, holds that the jurisdictional limit of the trial court fixed the
17 maximum amount that Plaintiff could have recovered from Ms. Hatfield. Because this judgment was satisfied,
18 Plaintiff is not legally entitled to recover anything more from Ms. Hatfield. In the absence of an entitlement
19 to recover additional money from the tortfeasor, Plaintiff does not have an entitlement to underinsured motorist
20 compensation.

21 Because summary judgment in favor of Defendant is warranted based on the satisfaction of judgment
22 and contractual language, the Court does not reach Defendant's other arguments.

23 With respect to Plaintiff's claims of bad faith, breach of fiduciary duty, and violation of the Consumer
24 Protection Act, Defendant's decision to deny underinsured motorist compensation was appropriate and
25 correct, as a matter of law. Accordingly, summary judgment on these claims in favor of Defendant is granted.
26 See *Gingrich v. Unigard Security Insurance Co.*, 57 Wn. App. 424, 788 P.2d 1096 (1990).

27 CONCLUSION

1 For the reasons discussed above, Defendant's Motion for Summary Judgment is **GRANTED**.
2 Plaintiff's claims are dismissed and Defendant shall recover its costs and disbursements herein.

3 IT IS SO ORDERED

4 DATED this 8th day of August, 2006.

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6 /s/ J. Kelley Arnold
7 J. KELLEY ARNOLD
8 United States Magistrate Judge
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